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ZONING BOARD OF APPEALS IPSWICH, MASSACHUSETTS

Meeting Minutes
February 18, 2016

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members, the Ipswich Zoning Board of Appeals held a meeting on Thursday February 18, 2016 at 7:30 p.m. in room A at the Town Hall. Members attending were Chairman Robert Gambale, Benjamin Fierro, Roger LeBlanc, Lewis Vlahos, and William Page. Associate Members Robert Tragert and Becky Gayton and Administrative Assistant to the Board Marie Rodgers.

Citizen Queries: There were none.

Public Hearings:

27 Water Street (Map 31D, Lot 091A) **Rivervine LLC** requests a **Special Permit and/or Variance** pursuant to Sections XI.J & XI.K – also, II Applicability A. and B.1, 2, and 5 to make a finding that the proposed two single-family attached dwellings is not more detrimental to the neighborhood than the prior non-conforming use; and section V.D Table of Use Regulations to find it is a by-right use and VI Dimensional and Density Regulations to find the footprint of the structure will be 41% less than the prior building footprint. This hearing was continued from the October, November 2015 meetings and January 2016 meeting. Roger LeBlanc recused himself and sat in the audience.

Chairman Gambale read the legal notice and re-opened the public hearing at 7:34 pm. Representing Mr. LeBlanc were Attorney David Ankeles, Engineer, Larry Graham and Architect Jean Allen.

Architect Jean Allen reviewed the proposal in a power point presentation and referenced the additional documents submitted to the Board of the height study, footprint study and floor plan layout.

Chairman initiated discussion regarding the siding, the roof, the lighting. Additionally, eight windows have been removed; there will be minimal windows on the side facing Mr. Nelson's house; the public walkway will be lighted.

Attorney Paul Haverty counsel for Mr. Mirvis and Ms. Hatch stated his arguments as outline in his three page brief Re: 27 Water Street Special Permit dated 2.18.2016 (hereby incorporated by reference) He spoke to the standards the Board is required to look at to grant relief.

Janet Craft indicated that she had a problem with interpretation and asked for a 3-dimensional rendering to accurately depict what the project will look like. She spoke to an architect, who said this request is not a problem and proceeded to describe how it's done. She continued to say the water colors were not helpful and it was confusing and not a true representation; and asked again for a 3-dimensional rendering; and objected to the living space on the third floor.

In response, the Chairman requested Larry Graham to explain the elevations.

Chairman Gambale referenced the Building Inspectors opinion in an email dated 2.18.2016 affirming a finished attic space is not a third floor; this is two stories with a finished attic.

Resident Bill Nelson, 29 Water Street stated that when he re-built his home he was not allowed to have running water in his attic. He then submitted a rendering showing the outline of a building with height comparisons. It did not contain a title, nor date or author. Mr. Nelson said it was created by Pitman & Wardley Architects, LLC.

Chairman Gambale referenced a ZBA petition from spring of 2009, for same lot, for a four-unit condominium; measurements on the plan were taken pre-fire, at ground elevations and they match identically to the current measurements for this proposal.

Larry Graham confirmed that all plans are stamped during the process. He commented on the Pitman & Wardley height comparison and said he was surprised they missed the boat; he agreed the height is 32'2" at elevation 10, however the 43.'6" was pulled from the height elevation on Jean Allen drawing, the highest point and is totally wrong and no use to this Board.

Mr. Craft, 62 Water spoke to the Zoning Bylaw and initiated discussion regarding the definition of building height and interpretation and understanding the bylaw. Larry Graham reviewed the formula he follows to determine height.

Attorney Paul Haverty argued that the proposed two-family structure will create more non-conformity because it's only allowed on lots having a minimum area of 12,000 square feet and contended this requires a variance, not a special permit. Additionally, he argued that a two-family will impact to neighborhood and be substantially more detrimental, than the prior use of a boat yard.

Attorney Ankeles responded, stating the original intent in the presentation under IIB2 Nonconforming Uses and Structures allows alteration that is not more detrimental to the neighborhood than the prior non-conforming use.

Mr. Fierro responded to Attorney Haverty saying it is not a non-conforming use and is a permitted use in this district; debate ensued.

Chair recognized Michael Mc Garty, 32 Water Street who initiated discussion concerning a portion of land, owned by his family and claimed by the Petitioner; now pending in Land Court and not yet resolved. Proposed use for the land in dispute was discussed; the original proposed viewing deck was eliminated and the originally proposed public use space is now located on the other side of the structure.

Mr. Mc Garty disputed lot coverage and encouraged the Board to be certain numbers are applied, saying the lot is too small for the size of the proposed building. Parking and private docks were discussed and the Chair noted that there is signage on Summer St. indicating no parking. In response to the Chair's query regarding traffic congestion and parking issues, Mr. McGarty and Ms. Danforth confirmed that parking problems already exist on Summer Street.

Larry Graham spoke to the numbers and comparisons and offered to speak with Mr. Mc Garty; he would be happy to go over the numbers.

Helen Danforth, 3 Hovey Street questioned the third floor as a habitable space and noted that Mr. Nelson at 29 Water St was told he could not have running water in his attic. Discussion ensued and Mr. Nelson confirmed that when he rebuilt his home after a fire, he was told by the then, Building Inspector no running water on the third floor; the Board could only speculate why no running water was a condition of his building permit.

Chairman asked if everyone had an opportunity to speak; no voice was heard.

MOTION:

Mr. Fierro moved to close the public hearing, Mr. Vlahos seconded, the motion passed unanimously with a roll call voice vote. Fierro, yes; Page, yes; Vlahos, yes; Gambale, yes; and Tragert, yes.

The Board discussed findings under II B. 2, for reconstruction as proposed for a two family dwelling. The Board discussed the use and the structure and considered whether the use proposed is substantially more detrimental to the neighborhood than that of the existing non conforming structure use of what was once a boat yard is now not allowed in this district.

The Planning Board decision to deny a three family dwelling was discussed; the Planning Board measured against the prior use. The proposal before the ZBA is a two family in the IR district can be built by right. The prior nonconforming structure was completely destroyed by fire on August 7, 2009. The project will provide additional housing for the town; there will be additional property tax revenue generated. The proposal increases the number of off-street parking spaces, and may produce less traffic than the commercial boatyard; impacts on natural environment : The Conservation Commission issued an Order of Conditions on February 9, 2016.

Chair spoke to the public hearing process; it provided input from the abutters and other residence, there was lots of give and take from the Petitioner and created a project that is more in line with the intent of the Bylaw. The public hearings gave dialogue for abutters and brought about changes.

Mr. Fierro spoke to the issue of the Petitioner being a member of the Board and should be treated no better and no worse than any other petitioner. He related instances, for example, to insure people have confidence in a fair process, permit modifications were advertised, abutters noticed and public hearings held, when he was not require to come before the Board.

Mr. Tragert noted that there's nothing in the bylaw regarding esthetics and alot of effort was put into esthetics in response to abutters.

Discuss compatibility with neighborhood.

MOTION: Mr. Fierro moved to grant the Petition of the applicant pursuant to section II.B.2 to reconstruct a non-conforming structure as submitted and in accordance with plans titledto be referenced in the decision, to construct a two family dwelling. The Board will incorporate the OOC from the Conservation Commission was discussed with findings for pre-construction and ninety-six conditions placed on the property and twenty-three continuous conditions. Chair noted that if the project was not on the water and not before ICC, the Board would have placed many similar conditions. The final decision will recognize the OOC.

Mr. Fierro reviewed the criteria in XI.J. Mr. Tragert agreed that the proposal is less detrimental than what was there previously.

MOTION:

Mr. Fierro moved the Board find the proposal for a two family dwelling is not substantially more detrimental than the pre-existing non-conforming boat yard and dwelling unit. Mr. Vlahos seconded, the motion passed unanimously with a roll call voice vote. Fierro, yes; Page, yes; Vlahos, yes; Gambale, yes; and Tragert, yes.

Mr. Fierro spoke to the criteria in XI.J to grant a Special Permit and benefit to the town the proposed use weighed against what could have gone in, that of a commercial boatyard and dwelling unit the benefits outweigh the negative impacts.

The Board discussed the request for a 3-dimensional rendering, never having to require one before, including review for much more complex projects that have come before the Board. The renderings and submittal were sufficient. Chair read a letter from Vickie Halmen, the Town's Manager for water & wastewater dated 8.27.15 indicated she found the plan acceptable as they related to the water and wastewater infrastructure and regarding the proposal an improvement for existing conditions.

MOTION:

Mr. Fierro moved the Board make these findings, Mr. Tragert seconded, the motion passed unanimously with a roll call voice vote. Fierro, yes; Page, yes; Vlahos, yes; Gambale, yes; and Tragert, yes.

MOTION:

Mr. Gambale moved the Board find that the proposed two single-family attached dwellings is not more detrimental to the neighborhood than the prior non-conforming use and it is a by-right use and grant a Special Permit as requested pursuant to the provisions in the Protective Zoning bylaw sections XI.J and II Applicability A. and B.1, 2, and 5. Mr. Fierro seconded. The motion passed unanimously: Fierro, yes; Page, yes; Vlahos, yes; Gambale, yes; and Tragert, yes.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Petition and associated documentation. Petition and associated documentation; Graham Associates, Inc. dated 9/30/2015 five pages; Contech Engineered Solutions dated 5/20/2015 and August 7, 2015 w/ 2 work sheets; sixteen pages 16" x 11" prepared by Graham Associates, Inc. date received 9/23/15; email from Roger LeBlanc dated 10/06/15 granting permission to any board member or town official to walk the property; email dated 9.30.2015 and photo forwarded from Town Manager Robin Crosbie from resident William Graham; email dated 10.07.2015 from resident Janet Craft and two photos of the site; Agreement to continue the Public Hearing signed by Attorney David Ankeles dated 10.15.15; email from Jeanne Allen Architect dated 10/20/15 and six pages of architectural drawings; Graham Associates, Inc. 15 pages of 33" x 24" Plans Prepared for Riverine, LLC.; email dated 10.21.15 from H.L. Graham Associates nine pages pdf plans; letter to the ICC from IRWA dated 8/14/15; email to Conservation Agent and Senior Planner dated 8/03/15 Paula Jones; email to Senior Planner dated 8/10/15 and 8/11/15 from Christine Sandulli; email to Senior Planner dated 06/30/15 from Paul & Pasty Valcour; email to Senior Planner and Conservation Agent dated 06/30/15 from Chris Morse; email to Senior Planner dated 06/30/15 from D. Twining; hand written letter from Herman Melanson Jr. dated 07/26/15; letter to ZBA dated 9/07/2009 from nine abutting residents; letter to Senior Planner dated 06/28/15 from Philip Mirvis & William Nelson; letter to ICC dated 06/27/15 from Michael McGarty; letter to Planning Chair and Board dated 06/24/15 from Janet Taisey Craft; five pages and one signature page dated 07/2015 from Abutters and Neighbors; Petition letter, no date and 29 pages of signatures; letter to ZBA Chair dated 10/23/15 signed Philip Mirvis with two pages listing objections; email from Larry Graham dated 11/05/15 and 27 Water St Elevation/Height Schematic; email from Philip Mirvis to ZBA and 7 pages; letter to ZBA Chair and Board dated 11/10/15 from Janet Taisey Craft; letter four pages, signed by Attorneys Lisa Mead and Paul Haverly to ZBA Chair and Board dated 11/10/15 and six pages referencing Deeds for 27 Water St; email dated 11.17.2015 from Phillip Mirvis with 23 pages power point presentation. email from Roger LeBlanc dated 11.08.15. Graham Associates, Inc. letter dated 9/30/2015 (5 pages) letter and supporting documents to Larry Graham, from Contech Engineering Solutions dated 5/20/2015 Graham Associates, Inc. Elevation/Heights Schematic Two pages no identification titled RECAP received 11/19/2015 BAL Laboratory certificate of analysis from Brian Longval - 37 pages email from Roger LeBlanc to David Ankeles dated 11/19/2015 letter from Glenn Gibbs, Planning Director dated 11/19/2015 two pages + on page analysis grid. Agreement for Extension of time to 1/21/2016 signed by Attorney David Ankeles dated 10.15.15;

Submitted after November 19, 2015; email dated 1.13.2016 with attachments of a brochure for vinyl siding products 12 pages; letter dated 1.12.2016 from Graham Associates, Inc. to the conservation commission seven pages; email dated 1.19.2016 with seven attachments; sheets A,B and C Proposed Water Street Elevation, Building Section Left Side Elevation, Floor 1 first floor, Floor 2 second floor, Floor 3 third floor. January 21, 2016 meeting Permit Plan prepared for RIVERINE, LLC seven pages dated 4.1.2015; Graham Associated No. 7 Rev. plans. E-mail dated 2/10/16 from Philip Mirvis Re: 27 Water Street Revision Letter from Abutters; mail dated 2/11/2016 from Roger LeBlanc -Order of Conditions 27 Water part 2; Email dated 2/11/2016 from Janet Craft -photo of flooded 27 Water Street; Email dated 2/12/2016 - renderings, sq ft study 27 Water St.; Email dated 2.13.2016 - building height study - 27 Water St; Email dated 2/16/2016 from Michael McGarty re: 27 Water St.; Email dated 2/17/2016 from Phil Mirvis renderings, sq ft study 27 Water St. Hand Delivered 3 pg letter dated 2/18/2016 from Attorney Mead and Attorney Haverly.

84 High Street (Map 30D Lot 152) **Ryan McShera** requests a **Special Permit** pursuant to §XI.J and VI.F Requirements for Accessory Buildings and Structures and V. D Table of Use Regulations for a Private Guest House in the same footprint as the existing barn. Chairman Gambale read the legal notice, opened the public hearing at 10:33 PM The barn was built circa 1890 and housed the water pump for the fire department located in the yellow house in Lord's Square.

Setbacks were discussed, front is 61' rear is 28' 7" the left side is 3 and 5/8 inches over the neighbor's property line. The Petitioner agrees. Petitioner submitted a letter of support dated 2/2/2016 from his direct neighbor Hegarty at 82 High Street. Parking was discussed, the Petitioner has two cars and has always backed out onto High Street, there's no other solution.

Discussion took place regarding options to resolve the encroachment on the two lots and the best mechanism to secure rights of both property owners.

The Petitioner agreed to continue to the March 17, 2016 meeting in order to conduct further research and resolve the issue of structures on neighboring lots.

MOTION:

Mr. Gambale moved to continue the public hearing for 84 High Street to the regularly scheduled meeting on March 17, 2016. Mr. Fierro seconded, the motion passed unanimously.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Petition and associated documentation; letter dated 2/2/2016 from abutter Hegarty at 82 High Street.

ZBA member Bill Page departs for the evening.

3 Howard Street (Map 26 Lot 003E) **Robert and Julie Bouchard** requests a **Special Permit and/or Variance** pursuant to § VI.B, and XI.J and/or XI.K to construct an additional garage bay with side setback relief needed of no more than 50% of the requirement. Chairman Gambale read the legal notice, opened the public hearing at 10:50 PM. The proposal was discussed.

The lot comprises 1.001 acres of land with a single family dwelling, built in 2014 on a conforming lot; with attached two car garage. The Petitioners would like to add a third bay to the garage and would encroach on the left side yard by twelve feet.

Discussion took place regarding the front and side set back, the structure on the lot is oriented to Howard Street, the left side has Chestnut Street and the rear abuts Roberts Road. Front setbacks of fifty feet from all three streets would require relief. Chair related his observations of the site.

The development began after the Petitioner moved in and lot abuts not Chestnut Street, but common land for the entrance for Willowdale Development. The Board asked the Petitioner to quantify the relief. The Petitioner said it wasn't a front when he bought the home and that three other houses on Howard Street have garages that are less than twenty feet from the lot line. After speaking with the Building Inspector he had the lot surveyed.

Discussion took place regarding side set back for detached garages and the average distance of abutting garages on the street.

The Board suggested continuing the hearing to next month's meeting in order to gather more information and determine how the Board could grant relief; the Petitioner agreed.

MOTION:

Mr. Gambale moved to continue the public hearing for 3 Howard Street to the regularly scheduled meeting on March 17, 2016. Mr. Fierro seconded, the motion passed unanimously.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Petition and associated documentation. 2/17/2016 copy print photo with third garage bay imposed on exiting garage and floor plan no date, no title, no scale.

39 Summer Street Map 42A Lot 061; **Matt Diana** requests a **Special Permit and/or Variance** pursuant to §XI.J-XI.K and II Applicability B. 2. to construct a new 14'x20' shed with electricity and heat in the same footprint as the existing shed and change of use of a legally existing non-conforming accessory structure.

Chairman Gambale read the legal notice, opened the public hearing at 11:20 PM. The Petitioner was present, representing the owners.

The proposal is to convert the existing shed with electricity and heat with a new structure 14' x 20' with electricity and heat. The footprint dimensions will remain the same. Chair read letters of support into the record (hereby incorporated by reference) The intended use is for the sole purpose of to store personal artwork and art supplies; no plumbing or sewer proposed.

The Board discussed the definition of Accessory Use in the Bylaw and attempted to determine if there was a change in use; structure meets all setbacks. Discussion took place and the Board speculated as to how this project needed ZBA approval. The Board felt the Building Inspector could issue a building permit as a matter-of-right. Board sensed it was wise to continue the public hearing, in order to meet with the Building Inspector; the Petitioner agreed to continue.

MOTION:

Mr. Fierro moved to continue the public hearing for 39 Summer Street to the regularly scheduled meeting on March 17, 2016. Mr. Gambale seconded, the motion passed unanimously.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Petition and associated documentation. Building Permit No. R-16-0007; email dated 2.1.2016 from Anthony Torra Building Inspector. Letter dated 2/9/2016 from owners Richard Spalding and Peter Bubriski.

Approval of Minutes –

Mr. Fierro moved to approve meeting minutes of 1/21/2016 with minor edits. Mr. Vlahos seconded, the motion passed unanimously. (*meeting minutes hereby incorporated by reference*)

Adjourn - As there was no further business, the Board unanimously voted to adjourn at 11:46 p.m.

Respectfully submitted,

Marie Rodgers
Administrative Assistant

These minutes were approved on March 17, 2016 with minor edits.